

**ARE YOU QUESTIONING MY AUTHORITY?  
WITH INCREASED SCRUTINY OF PHARMACY CLAIMS, PHYSICIANS SHOULD  
NOT BE SURPRISED WHEN THE PHARMACIST CALLS**

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Lately, the news has been filled with stories of increased health care fraud enforcement activity on a national and local level. If misery loves company, then physicians should be comforted in knowing that they are not alone—the pharmacists are being scrutinized in unprecedented ways as well. With federal and state recognition of the widespread abuse of prescription medication, law enforcement and third party payors are focusing their attention on the source of these medications—the pharmacies and the pharmacists dispensing them—due to their role as gatekeepers of our communities.

Physicians should be aware that pharmacists have an independent affirmative duty to take reasonable steps to determine that the medications that are dispensed from their pharmacies are for legitimate medical purposes. As such, pharmacists may contact physicians to verify a particular prescription. An inquiry may be made in order to verify that the physician whose DEA registration appears on the prescription actually prescribed the subject medication, the dosage of the medication, the quantity of the medication, the number of refills of the medication, whether the medication is appropriate for the condition being treated, and potential contraindications that may exist with the medication (e.g., due to the interaction with another medication that the patient is taking). These types of inquiries should not be viewed as questioning the physician's medical judgment. Under Section 7311(1)(e) of the Michigan Public Health Code, the Disciplinary Subcommittee of the Michigan Board of Pharmacy is authorized to take disciplinary action against a pharmacist for failing to maintain effective controls against diversion of controlled substances other than for legitimate and professionally recognized therapeutic, scientific or industrial uses. Similarly, Section 7311(1)(g) of the Michigan Public Health Code authorizes the Disciplinary Subcommittee of the Michigan Board of Pharmacy to take disciplinary action against a pharmacist if the pharmacist dispenses a controlled substance for other than legitimate or professionally recognized therapeutic, scientific or industrial purposes. Furthermore, under administrative rules promulgated by the Michigan Board of Pharmacy, a pharmacist shall not fill a prescription order if, in the pharmacist's professional judgment, the pharmacist has reason to believe that the prescription will be used for other than a legitimate medical purpose. 1998 AACCS, R 338.490(2)(d).

These and other statutes, rules and regulations impose on pharmacists a duty to essentially verify the accuracy of a prescription for controlled substances prior to dispensing them. Such verification may prevent fraudulent prescriptions from being dispensed (e.g., drug seeking patients who may alter a prescription for higher dosages or different medications). Moreover, these types of inquiries may catch inadvertent errors by physicians in prescribing medications leading to decreased risk for medical malpractice claims due to medication error.

Pharmacists may send written verification forms to physicians to complete and return to the pharmacists in order to satisfy their legal obligations. Some pharmacists who note a pattern of prescribing certain controlled substances by a particular physician may request a meeting with the physician to better understand his or her practice and gain a level of comfort with prescribing patterns that might otherwise indicate a deviation from the norm. For example, a family practitioner may have a significant volume of chronic pain patients and therefore may prescribe a higher than average amount of Schedule II narcotics. In such circumstances, the pharmacist may legitimately inquire as to what precautions are being taken by the physician to avoid drug seekers and/or address addiction. Such precautions may include the physician using a narcotics contract, use of the Michigan Automated Prescription System (MAPS), using addiction screening tools/assessments, making the appropriate referrals to addictionologists and performing random or scheduled urine screens—not only to test to make sure that the subject patient is not using illegal street drugs but also to make sure that the medication being prescribed is in the patient’s system as opposed to being diverted and sold on the street.

Third party payors such as BCBSM and CVS Caremark are also quite active in auditing pharmacists/pharmacies and demanding refunds of alleged overpayments for pharmacy claims based upon denial of medical necessity or failure to comply with signature requirements. Although most third party payors will not use statistical projections for denials based upon medical necessity, denials for failing to comply with signature requirements or other documentation requirements are often extrapolated to the entire amount paid by the third party payor during the subject audit time frame. Often this results in large overpayment demands. In order for pharmacists to defend their rights to reimbursement for the claims submitted, pharmacists will often contact physicians and their office staff asking for the necessary documentation to support their claims. Physicians who themselves have been through the audit process can surely empathize with the pharmacists in these circumstances and should timely cooperate with reasonable requests for such supporting documentation.

Physicians that dispense medications from their offices should also be aware that they are subject to many of the same statutes, rules and regulations imposed on pharmacists to essentially verify the accuracy of a prescription for controlled substances prior to dispensing them. There are also numerous federal and state statutes, rules and regulations regarding the appropriate storage, labeling, use and advertising of medications—the scope of which is too broad and outside the focus of this article. Nonetheless, physicians who do dispense medications from their Michigan offices not only require a Michigan Controlled Substance License and a DEA registration, but also require a Michigan Drug Control License for each office location where dispensing occurs.

Abuse of prescription medications has grown to epidemic proportions in Michigan and throughout the country. As enforcement authorities and third party payors attempt to tackle the problem, pharmacists and physicians are well advised to adhere to the motto regarding the three

most important aspects of health care compliance (borrowed from realtor's describing "location" as the key): "documentation, documentation, documentation."